

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10325) that:

1. Carrier violated the Clerks' Rules Agreement when it unjustly treated employee, Roy Scott Jr., by disqualifying him on Yard Clerk Position No. 25780 on April 18, 1984.

2. Carrier shall now be required to assign employee Roy Scott Jr. to Yard Clerk Position No. 25780 and compensate him an additional eight (8) hours pro rata for each work day Claimant is held off Position No. 25780."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The relevant facts in this case show that the Claimant bid for and was awarded Yard Clerk Position No. 27580. The principal duties as stated on the Bulletin which announced the vacancy were: "Check yard, check perishables, make train lists and operate IBM machine." On April 18, 1984, after working the Yard Clerk position for just two (2) days, his Supervisor disqualified him. At the Unjust Treatment Hearing held on this matter, the Supervisor explained his reason for disqualifying the Claimant, stating that the Claimant himself had expressed the opinion that he could not perform the job and the suggestion that the Supervisor use an extra person while the Claimant "broke in." He further testified that even after he assisted and instructed the Claimant during the two (2) day period, he determined on the basis of his observation that the Claimant did not have adequate qualifications and did not possess sufficient fitness and ability. It is this determination that triggered the events that led to the claim before the Board.

While there are a number of Rules that, to various degree are applicable to this claim, Rule 8(a) of the Agreement is controlling.

"When an employe bids for and is assigned to a permanent vacancy or new position he will be allowed thirty (30) working days in which to qualify and will be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employe being removed prior to thirty (30) working days when manifestly incompetent. If an employe fails to qualify he shall retain all seniority rights but cannot displace a regularly assigned employe. He will be considered furloughed as of date of disqualification and if he desires to protect his seniority rights he must comply with the provisions of Rule 12(b)."

The initial burden in these matters rests upon the Organization, a burden which it has met. The Claimant, at the time of the dispute, had had extensive experience as a Clerk beginning in early 1950, including approximately seven years as an IBM Clerk. Accordingly, the burden of proof then shifted to the Carrier to show that the Claimant was "manifestly incompetent" pursuant to Rule 8(a). Clearly, given the strong relevant language of this Rule, it contemplates a longer period to qualify than found in this case. Third Division Award 25365 between these parties, held in pertinent part that:

"To-be-sure, there are graduations of competency levels in all training, qualifying and performance situations, but the type and caliber of incompetency contemplated by Rule 8(a) presupposed palpable incompetency. Moreover, by definition, the need for a qualifying period indicates an employee need not be totally competent to perform all functions of a position."

Given the Claimant's past experience and the testimony of the Supervisor at the hearing held on this matter, we conclude that it was not shown that the Claimant was "manifestly incompetent."


Turning to the remedy, the Board notes that the record is not sufficiently clear on the specific dates or time frame for which the Claimant is entitled to lost compensation. Accordingly, the Carrier is required to make the Claimant whole. In situations such as here, this means that the Claimant is entitled to lost compensation from the time he was furloughed until he was recalled as well as payment thereafter for the difference in wages between the position for which recalled and the position at issue herein.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.